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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. PT-2008-3144

MATT LEE FARMER
9469 Jornada Lane, #4
Atascadero, CA 93422

OAH No. 2011050389

Psychiatric Technician License No.
PT 32898

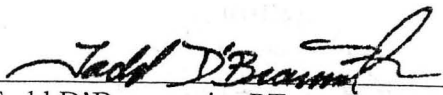
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on April 22, 2012.

IT IS SO ORDERED this 23rd day of March, 2012.



Todd D. Braunstein, PT
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MATT LEE FARMER,

Respondent.

Case No. PT-2008-3144

OAH No. 2011050389

PROPOSED DECISION

Administrative Law Judge Danette C. Brown, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on November 8, 2011.

Elena L. Almanzo, Deputy Attorney General, represented complainant, Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer, Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California.

Matt Lee Farmer (respondent) appeared and was represented by Ken Murch, Consultant, California Association of Psychiatric Technicians.

Evidence was received, the record closed and the matter was submitted for decision on November 8, 2011.

FACTUAL FINDINGS

1. On September 13, 2005, the board issued Psychiatric Technician License Number PT 32898 to respondent. The license is currently active and will expire on December 31, 2012, unless renewed.

2. On January 12, 2011, Teresa Bello- Jones, J.D., M.S.N., R.N., (complainant), made and filed the Accusation solely in her official capacity as Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (board), Department of Consumer Affairs.

3. On May 2, 2006, in the Superior Court of California, County of San Luis Obispo, Paso Robles Branch, in the matter entitled *People of the State of California v. Matthew Lee Farmer*, Case No. M000386468, respondent, upon a plea of nolo contendere, was convicted of violating Penal Code section 647, subdivision (f), under the influence of

alcohol in a public place, a misdemeanor. Imposition of sentence was suspended, and respondent was placed on informal probation for one year, upon the following terms: pay fines and fees of \$442.50; attend 20 Alcoholics Anonymous (AA) meetings by July 21, 2006; do not be in public place with alcohol in system; and obey all laws.

4. The circumstances underlying the conviction are that, on April 9, 2006, at 2:00 a.m., respondent was found by an Atascadero police officer in front of Von's Shopping Center. Respondent was stumbling and unable to stand upright without the assistance of a nearby wall. The officer asked respondent to sit on the curb for his safety. Respondent was unable to understand the officer's request and looked at the officer with a blank stare. After asking respondent again to sit down, respondent complied, nearly falling as he did. After asking respondent for his identification, the officer smelled a strong odor of alcohol on respondent's breath. Respondent's eyes were red and glassy. Respondent exhibited objective symptoms of alcohol intoxication. Respondent admitted to the officer that he had been drinking. Respondent was arrested and transported to jail.

5. On July 21, 2009, in the Superior Court of California, County of San Luis Obispo, Paso Robles Branch, in the matter entitled *People of the State of California v. Matthew Lee Farmer*, Case No. M-108-740-09, respondent, upon a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (b), driving under the influence (DUI) with a blood alcohol level of .08 percent or more, a misdemeanor. Imposition of sentence was suspended, and respondent was placed on informal probation for three years, upon the following terms: serve two days in jail, with credit for one day served; pay \$1,863 in fines and fees; enroll in and complete First Offender DUI Three Month Program by July 21, 2010; submit to search of person, automobile, residence without a search warrant at any time by a probation or peace officer; and obey all laws.

6. The circumstances underlying the conviction are that, on May 9, 2009, a California Highway Patrol (CHP) officer was called to the scene of a vehicle blocking the roadway on a blind curve. The officer found the vehicle unoccupied, and also noticed a red sedan on the opposite side of the road. Respondent's girlfriend was in the driver's seat, and respondent was in the passenger seat. When asked what happened, respondent stated that he was driving along and his transmission "went out." He called his girlfriend because she had a "AAA" card and he was planning on towing it. Respondent exited the red sedan and began walking with the officer towards his vehicle. The officer noticed respondent stumble to his left side, and as they walked further, the officer noticed that respondent's speech was slurred and very slow and deliberate. The officer asked respondent if he was okay, and respondent stated "Yeah I'm just really tired I had to walk a long way to get cell coverage." When asked if he had been drinking, respondent said no. The officer smelled alcohol on respondent's breath, and respondent explained that he had finished a mint. Respondent eventually admitted to drinking the previous night at a poker party. After administering several field sobriety tests to respondent, the officer determined that respondent was under the influence of alcohol and arrested respondent. Respondent's blood alcohol content was 0.14 percent.

Factors in Aggravation, Mitigation, Rehabilitation

7. In respect to respondent's May 2, 2006 conviction, respondent explained that he went out for drinks with friends, and tried to "play it safe" by having his roommate drive them to the bar. When he was at the bar, "somehow I lost my friends and I decided to go home." Respondent called his roommate multiple times but did not answer. Respondent then proceeded to walk home, but "my walk turned into a stumble, and I guess I had more drinks than I thought." Respondent admitted that he was drunk in public. He paid a \$350 fine and attended 20 AA meetings. Respondent stated that "this was an eye opener for me and it won't happen again." Respondent did not continue to attend AA meetings after his completion of 20 AA meetings as required by the court.

8. In respect to respondent's July 21, 2009 conviction, respondent explained that on the day before Mother's Day, he made a trip from Atascadero to Coalinga to visit his family. His friends found out that he was in town, and they planned a "poker game/reunion fiesta" at a friend's house. Respondent drank mixed drinks as well as beer. Towards the end of the night "our goal from what I remember was to get drunk together." He set his alarm prior to drinking because the next morning respondent had to attend a wedding. Respondent woke up the next morning "in no shape to drive, still feeling the effects of the alcohol the night before." Respondent did not want an argument with his girlfriend if he were to miss the wedding, so he proceeded to drive back to Atascadero. As he was driving on Highway 41, his clutch "went out" and would not move. He called his girlfriend to call "AAA" for roadside assistance. While waiting in his girlfriend's car for AAA, a CHP officer came upon the scene, and eventually arrested respondent for driving under the influence. Respondent failed to mention that he initially told the officer that he had not been drinking. He ultimately admitted to the officer that he drank the previous night. Respondent stated that "this is my first and last DUI."

9. Respondent is almost 27 years old. He was 21 at the time of his 2006 conviction, and 24 at the time of his 2009 conviction. Respondent asserted that his DUI arrest was a life changing event, in that it affected his job, his relationship, and his wallet. He was depressed having to "bum" rides. The DUI conviction affected his job, in that he informed his employer, Atascadero State Hospital, of his conviction, resulting in the loss of his Defensive Driver card. Respondent felt bad because everyone talked about him at work. The DUI conviction also affected respondent's relationship with his fiancée, but respondent did not provide further details as to how his relationship was affected.

10. Respondent completed the three-month First Offender DUI program on January 28, 2010. He is currently making payments of \$161 per month to the First Offender DUI Program, and is making payments of \$60 per month towards his court fees and fines. Respondent is currently on probation until July 2012. He has not had his convictions expunged pursuant to Penal Code section 1203.4.

11. He was required to attend 10 AA meetings as a result of his 2009 DUI conviction. After completing the court requirement, respondent attended AA periodically. He learned from AA that "nothing good comes from drinking alcohol." Respondent does not

currently have an AA sponsor. Respondent asserted that he has learned to be responsible for his actions, but did not provide further details as to how he takes responsibility, other than completely abstaining from alcohol. After his 2006 conviction, respondent continued to drink after completing the First Offender DUI Program. He does not currently drink alcohol. His sobriety date is July 18, 2011, approximately two years after his 2009 DUI conviction. He feels that the best way to stay out of trouble is to be abstinent from alcohol use. Respondent asserted that he has a support system, consisting of his mother, fiancée, and his relationship with God, to assist him in his sobriety efforts. Neither respondent's mother nor fiancé testified on respondent's behalf with regard to their observations of respondent's drinking habits or respondent's efforts at sobriety.

12. Respondent is currently employed as a Psychiatric Technician at Atascadero State Hospital. He has been employed there for six years. His duties include acting as a "shift lead." He works with mentally disordered offenders (MDO's) who are committed to the hospital by the courts. Respondent dispenses medications, maintains the safety of his unit, and works with treatment groups. Respondent's annual evaluations at the hospital reflect that respondent has met and exceed standards in the areas of clinical practice, the quality of his work, job knowledge, and supervision of others.

13. From 2008 to 2010, respondent was the Chair of a psychiatric technicians professional organization, a position that he attained by nomination and voting by his peers. In 2011, respondent was again nominated by his peers to act as Chair of the organization. The purpose of the organization is to promote professional practice.

14. Respondent is willing to participate in continuing alcohol rehabilitation. He wants to "keep on the right path." When he first went to the three-month First Offender DUI Program, he did not consider himself an alcoholic. However, after attending the program, he admitted to himself that he is an alcoholic, and that he had alcoholic "tendencies." Respondent admitted that he went to work "hung-over" about once every three months. This affected his work performance and hindered his ability to make good decisions.

15. Respondent currently performs community service by managing on softball teams through a local recreation league. He also played in a softball tournament to benefit Toys for Tots. He participates in the league three days per week. No drinking is involved.

16. Respondent has not completed or is currently enrolled in additional vocational training or continuing education, but he is required to complete 30 continuing education units when his license is renewed on or before December 31, 2012.

17. On November 3, 2011, the Attorney General certified that he had expended \$1,150 in costs to prosecute this case, and billed the board accordingly. The board has requested that respondent pay the prosecution costs. Respondent is able to pay the costs.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Business and Professions Code section 4521 states, in pertinent part:

The board may suspend or revoke a license issued under this chapter for any of the following reasons:

(a) Unprofessional conduct, which includes, but is not limited to, any of the following:

(5) Use of ... alcoholic beverages, to an extent or in a manner dangerous or injurious to himself, any other person, or the public ...

(6) Be convicted of a criminal offense involving the falsification of records concerning the prescription, possession, or consumption of any of the substances described in paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the conviction ...

[¶]...[¶]

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

2. The board's criteria of substantial relationship is set forth in California Code of Regulations, title 16, section 2578, which states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed psychiatric technician if to a substantial degree it evidences present or potential unfitness of a licensed psychiatric technician to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

- (a) Procuring a license by fraud, misrepresentation, or mistake.
- (b) A conviction of practicing medicine without a license in violation of Chapter 5 of Division 2 of the Business and Professions Code.
- (c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 10, Division 2 of the Business and Professions Code.
- (d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.
- (e) Conviction of a crime involving fiscal dishonesty.
- (f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code.

Standard of Proof

3. A professional license may be disciplined only upon "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) "The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence.... "Clear and convincing" evidence requires a finding of high probability.'..." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

Substantial Relationship

4. As set forth in Findings 3 and 5, respondent was convicted of two crimes involving the use of alcohol. Such crimes are not specifically enumerated under the substantial relationship criteria provided under California Code of Regulations, title 16, section 2578. However, the crimes of being in a public place under the influence of alcohol, and DUI with a blood alcohol content of .08 percent or more, evidences potential unfitness of a licensed psychiatric technician to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare, within the meaning of California Code of Regulations, title 16, section 2578. In respect to respondent's 2006 conviction, respondent, in an attempt to walk home after repeated attempts to obtain a ride from his roommate as planned, ended up drunk and disoriented at a shopping center. Although the incident did not occur at respondent's workplace during work hours, respondent acted in a manner that could have put the public at risk, because his judgment and actions were

impaired. In respect to respondent's 2009 DUI conviction, respondent drove while his blood alcohol content was almost twice the legal limit, at 0.14 percent, thus posing a risk to himself and the public. Therefore, respondent's convictions are substantially related to the qualifications, functions, and duties of a psychiatric technician.

Cause for Discipline

5. Clear and convincing evidence established cause for discipline of respondent's psychiatric technician license pursuant to Business and Professions Code section 4521, subdivision (a)(5), in that respondent consumed alcohol in a manner dangerous or injurious to himself and the public.

6. No cause was established for discipline of respondent's psychiatric technician license pursuant to Business and Professions Code section 4521, subdivision (a)(6), in that the board did not establish that respondent was convicted of a criminal offense involving the falsification of records concerning consumption of alcohol.

7. Clear and convincing evidence established cause for discipline of respondent's psychiatric technician license pursuant to Business and Professions Code section 4521, subdivision (f), in that respondent's convictions are substantially related to the qualifications, functions, and duties of a psychiatric technician.

Rehabilitation

8. The board's criteria of rehabilitation are set forth in California Code of Regulations, title 16, section 2578, which states:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 4524 of the Business and Professions Code, the Board, in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.

- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

9. In this case, respondent created potential harm to the public by being in a public place while under the influence of alcohol, and driving under the influence with a blood alcohol content almost twice the legal limit. No potential or actual harm to any patient occurred. The convictions are respondent's only criminal offenses, both of which he committed in his early twenties. Respondent's current criminal probation will be completed in seven months. He has not yet had his convictions expunged pursuant to Penal Code section 1203.4. Respondent is gainfully employed as a psychiatric technician, and has met or exceeded his job standards. He has shown that he is a leader in his profession by chairing a professional organization of psychiatric technicians. He is required to obtain 30 continuing education units before his license expires on December 31, 2012, and thus, will take classes in his field.

10. Although respondent continued to drink after his 2006 conviction, and was later convicted of DUI in 2009, respondent now knows the serious consequences of his actions. He has admitted that he is an alcoholic, and completely abstains from drinking. He is painfully aware that his license, and consequently his job, are in jeopardy if he continues to engage in the consumption of alcohol.

11. The Board's disciplinary guidelines have been reviewed and considered. Respondent has completed over 30 AA sessions since 2006, and is willing to undertake additional alcohol rehabilitation. Respondent recognizes the consequences of drinking and its effect on his relationships and his job. With support from his mother and fiancé, and the assistance of AA or similar support counseling, respondent will have powerful tools to assist him in maintaining his sobriety. The evidence showed that respondent's conduct in a clinical

and academic environment is competent and professional. The factors of mitigation and rehabilitation set forth in Findings 9 through 14, and Legal Conclusions 9 through 11, show that respondent has made progress in addressing his drinking problem. Given that respondent's crimes occurred at a relatively young age and early in his career, and his continued efforts at sobriety with the help of his mother and fiancé, it would not be against the public interest to allow respondent to continue to retain his license on a probationary basis.

Costs

12. Business and Professions Code section 125.3 provides, in pertinent part, that the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Business and Professions Code section 125.3, subdivision (c), states:

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

13. As set forth in Factual Finding 17, the reasonable costs of prosecuting this matter by the Attorney General are \$1,150. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, identifies the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions like Business and Professions Code section 125.3. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced; the licensee's subjective good faith belief in the merits of his or her position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay; and whether the scope of the investigation was appropriate to the alleged misconduct. In this case, cause for discipline of respondent's license was established. The board is entitled to costs billed by the Attorney General. As set forth in Finding 17, respondent has the ability to pay costs.

14. Under all of the facts and circumstances, and balancing respondent's concerns against the board's obligation to protect the public through licensing actions such as this one, assessment of costs in the amount of \$1,150 against respondent is reasonable and appropriate. Respondent shall be given the opportunity to pay costs by means of a payment plan.

ORDER

Psychiatric Technician License Number PT 32898 issued to Matt Lee Farmer is revoked. The revocation is stayed, pending successful completion of three years of probation. The terms and conditions of probation are as follows:

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of law, including alleged violations, to the board within five (5) days of occurrence. To ensure compliance with this term, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the board determines that fingerprints were previously submitted by the respondent to the board. Respondent shall also submit to the board a recent 2" x 2" photograph of himself within thirty (30) days of the effective date of the decision.

If respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

2. COMPLIANCE WITH PROBATION PROGRAM

Respondent shall fully comply with the terms and conditions of probation established by the board and shall cooperate with representatives of the board in its monitoring and investigation of the respondent's compliance with the Probation Program. Upon successful completion of probation, respondent's license will be fully restored.

3. SUBMIT WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the board or its representatives. These reports or declarations shall contain statements relative to respondent's compliance with all the conditions of the board's Program. Respondent shall immediately execute all release of information forms as may be required by the board or its representatives.

In the first report, respondent shall provide a list of all states and territories where he has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the board if he applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the board's decision to the regulatory agency in every state and territory in which he has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the board, in writing, within five (5) days of any change in address or telephone number(s). Respondent's failure to claim mail sent by the board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF THE STATE

Respondent shall notify the board, in writing, within five (5) days, if he leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period he resides or practices outside of California. The respondent shall provide written notice to the board within five (5) days of any change of residency or practice.

Respondent shall notify the board, in writing, within five (5) days, upon his return to California.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person at all meetings as directed by the board or its designated representatives.

7. NOTIFICATION TO EMPLOYERS

When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify his employer of the probationary status of respondent's license. This notification to the respondent's current health care employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of his probationary status with the board prior to accepting employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the board all performance evaluations and any other employment related reports as required by the board. Respondent shall notify the board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Respondent shall notify the board, in writing, within five (5) days of any change in employment status. Respondent shall notify the board, in writing, if he is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in his licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, respondent shall not work for a nurse registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a board approved continuing education course except as approved, in writing, by the board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the board.

9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, respondent shall obtain approval from the board of the supervision provided to the respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation, except as approved, in writing, by the board.

10. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times while on probation, maintain an active current license with the board, including any period of suspension.

Should respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, respondent's license shall be subject to any and all terms of this probation not previously satisfied.

11. COST RECOVERY REQUIREMENTS

Respondent shall pay to the board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1,150.

Respondent shall be permitted to pay these costs in a payment plan approved by the board with payments to be completed no later than three months prior to the end of the probation period. The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the board for its investigation and prosecution costs. Failure to make payments in accordance with any formal agreement entered into with the board or pursuant to any Decision by the board shall be considered a violation of probation.

If respondent has not complied with this condition during the probationary period, and respondent presents sufficient documentation of his good faith effort to comply with this condition, and if no other conditions have been violated, the board or its representatives, may, upon written request from the respondent, extend the probation period up to one year, without further hearing, in order to comply with this condition. During the extension, all original conditions of probation will apply.

Except as provided above, the board shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

12. LICENSE SURRENDER

During probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the board. The board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the board. A licensee who surrenders his license may petition the board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for surrender:

- Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- One (1) year for a license surrendered for a mental or physical illness.

13. VIOLATION OF PROBATION

If respondent violates the conditions of his probation, the board, after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of respondent's license. If during probation, an accusation or petition to revoke probation has been filed against the respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the board.

14. CHEMICAL DEPENDENCY SUPPORT/RECOVERY GROUPS

Within five (5) days of the effective date of this Decision, respondent shall begin or continue attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Psychiatric Technicians Support Group). Verified documentation of attendance shall be submitted by the respondent with each written report as required by the board. Respondent shall continue attendance in such a group for the duration of probation.

15. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.

DATED: January 30, 2012



DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

FILED

JAN 12 2011

Board of Vocational Nursing
and Psychiatric Technicians

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BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. PT-2008-3144

MATT LEE FARMER
313 E. Sacramento Street
Coalinga, CA 93210
Psychiatric Technician License No. PT
32898

A C C U S A T I O N

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

Registered Nurse License

2. On or about September 13, 2005, the Board issued Psychiatric Technician License Number PT 32898 to Matt Lee Farmer ("Respondent"). The psychiatric technician license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2010, unless renewed.

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STATUTORY PROVISIONS

3. Section 4520 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensed psychiatric technician for any reason provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code § 4500, et. seq.)

4. Code section 118, subdivision (b) provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Code section 4545, the Board may renew an expired license at any time within four years after the expiration.

5. Code section 4521 states, in pertinent part:

The board may suspend or revoke a license issued under this chapter [the Psychiatric Technicians Law (Bus. & Prof Code, 4500, et seq.)] for any of the following reasons:

(a) Unprofessional conduct....,

(5) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(6) Be convicted of a criminal offense involving the falsification of records concerning prescription, possession, or consumption of any of the substances described in paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

COST RECOVERY

6. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Criminal Conviction)**

5 7. Respondent has subjected his license to discipline pursuant to Code section 4521,
6 subdivision (f) in that Respondent has been convicted of the following crimes that are
7 substantially related to the qualifications, functions, or duties of a licensed psychiatric technician:

8 a. On or about May 2, 2006, in the Superior Court, County of San Luis Obispo, Paso
9 Robles Branch, California, in the matter entitled *People vs. Matthew Lee Farmer*, 2006, Case No.
10 M000386468, Respondent was convicted following his plea of nolo contendere of a violation of
11 Penal Code section 647, subdivision (f) (in a public place under the influence of alcohol), a
12 misdemeanor. The circumstances of the crime are that on or about April 9, 2006, a City of
13 Atascadero Police Officer responded to a report of an intoxicated person stumbling down the
14 street. Respondent was subsequently arrested and charged with public intoxication.

15 b. On or about July 21, 2009, in the Superior Court, County of San Luis Obispo, Paso
16 Robles Branch, California, in the matter entitled *People vs. Matthew Lee Farmer*, 2009, Case No.
17 M-108-740-09, Respondent was convicted following his plea of nolo contendere of a violation of
18 Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08% or
19 more), a misdemeanor. The circumstances of the crime are that on or about May 9, 2009, the
20 CHP responded to a report of a stranded motorist whose vehicle was partially blocking the
21 roadway. The CHP questioned Respondent about whose vehicle it was and noticed that
22 Respondent was exhibiting signs of intoxication. Following the field sobriety tests, Respondent
23 was arrested and charged with driving under the influence of alcohol. Respondent's blood
24 alcohol measured .15%, .17%, and .15%.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Conviction of a Crime Involving Alcohol)**

27 8. Respondent has subjected his license to discipline pursuant to Code section 4521,
28 subdivision (a)(6), on the grounds of unprofessional conduct, in that Respondent has been

1 convicted of crimes involving the consumption of alcohol, as more particularly set forth in
2 paragraph 7, subparagraphs a and b, above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Use Alcohol to an Extent or in a Manner Dangerous or Injurious)**


5 9. Respondent has subjected his license to discipline pursuant to Code section 4521,
6 subdivision (a)(5), on the grounds of unprofessional conduct, in that on or about April 9, 2006,
7 and May 9, 2009, Respondent used alcohol to an extent or in a manner dangerous or injurious to
8 himself or others, as more particularly set forth in paragraph 7, subparagraphs a and b, above.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
12 issue a decision:

- 13 1. Revoking or suspending Psychiatric Technician License Number PT 32898, issued to
14 Matt Lee Farmer;
- 15 2. Ordering Matt Lee Farmer to pay the Board of Vocational Nursing and Psychiatric
16 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to
17 Business and Professions Code section 125.3; and,
- 18 3. Taking such other and further action as deemed necessary and proper.
- 19
20
21

22 DATED: January 12, 2011


TERESA BELLO JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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